IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 839 of 2002

For Approval and Signature :

HONOURABLE MS.JUSTICE R.M.DOSHIT

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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LATABEN DEVANAND PANDIT & 2 - Appellant(s)
Versus
JADHAV R.H. [DELETED.] & 2 - Defendant(s)

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Appearance :
MR JITENDRA M PATEL for Appellant(s) : 1 - 3.
DELETED for Respondent (s) : 1.
MR RAJNI H MEHTA for Respondent (s) : 3.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

and

HONOURABLE MR.JUSTICE C.K.BUCH

Date : 05/12/2007

ORAL JUDGMENT (Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

This appeal preferred under Section 173 of the Motor Vehicles Act, 1988, arises from the judgment and award dated 06th September, 2001 passed

by the Motor Accidents Claims Tribunal, Bharuch (hereinafter referred to as 'the Tribunal') in Motor Accident Claim Petition No.1115 of 1993. The appellants are the claimants. The respondent no.3 is the United India Insurance Company Ltd., insurer of the offending tanker bearing Registration No.GRV-6804.

On 17th November, 1993 at around 07-30 O'clock in the evening the deceased Devanand Pandit and three others were travelling in a Fiat Car bearing Registration No.GJ-6-A-3800 on the National Highway No.8 from Daman to Vadodara. On the way, near Bharuch the said car collided with the above referred offending tanker. In the said road accident, the driver Devanand Pandit and another passenger lost their lives. The appellants, the heirs and legal representatives of the said Devanand Pandit, filed above referred Motor Accident Claim Petition No.1115 of 1993 before the Tribunal for compensation in the sum of Rs.50 lakhs.

The claimants are the widow, minor child and mother of the deceased Devanand Pandit. According to the claimants, the deceased Devanand Pandit was 34 years of age. He was employed by the Life Insurance

Corporation of India as a Development Officer for some years. His annual salary including the allowances and incentive bonus was Rs.1,71,000/-. Had the deceased survived, his income would have increased to Rs.4 lakhs to Rs.5 lakhs by the time he reached the age of superannuation. The opponent nos.1 and 2, the driver and the owner of the offending tanker did not appear before the Tribunal nor did they contest the claim. The Insurance Company contested the claim.

In support of the claim, the claimant no.1 widow of the deceased and one Himanshu Chandubhai Shah, the Senior Manager in the Life Insurance Corporation of India, gave evidence at Exs.52 and 71. According to the deponent Lataben, the widow of the deceased, the deceased was earning around Rs.15,000/- to Rs.20,000/- a month. By the time, the deceased would have reached the age of superannuation, his annual income would have been around Rs.30 lakhs to Rs.40 lakhs. The above referred Himanshu Shah has produced the salary certificate of the deceased and the Form No.16 at Exs.41, 43 and 45. The FIR and the panchnama of scene of accident are produced at Exs.26 and 27.

The Tribunal considering the evidence on record held that it was the offending tanker which was responsible for the accident in question. As to the dependency loss, the Tribunal has assessed the annual income of the deceased at Rs.60,000/-. Considering the possible future increase in the income of the deceased, the average monthly income has been worked out at Rs.7500/-. After deducting a sum of Rs.2500/- (1/3rd of the amount) for the maintenance and personal expenditure of the deceased, the monthly economic loss is calculated at Rs.5,000/-. Considering 34 years' age of the deceased, the Tribunal has adopted the multiplier of 17 and has computed the total economic loss at Rs.10,20,000/-. In addition, the Tribunal has awarded the conventional amount of Rs.9,500/-. Thus, the compensation of Rs.10,29,500/- has been awarded to the claimants along with interest at the rate of 9% and the proportionate cost.

Feeling aggrieved, the claimants have preferred this appeal for enhancement of the amount of compensation.

Mr.Patel has submitted that the monthly dependency loss calculated at Rs.5,000/- is too

conservative and contrary to the evidence on record. He has also submitted that considering the age of the deceased, the multiplier of 17 adopted by the Tribunal is not adequate. The Tribunal ought to have adopted the multiplier of 34 years. He has also submitted that the Tribunal ought to have awarded a sum of Rs.50,000/- for loss of consortium, expectancy of life, funeral expenses, etc. In support of his submissions, he has relied upon the judgments of the Hon'ble Supreme Court in the matters of ***New India Assurance Co. Ltd. v. Kiran Singh and others [2004(10) SCC 649]*** and ***United India Insurance Co. Ltd. and others v. Patricia Jean Mahajan and others [2002(6) SCC 281].*** He has submitted that in the matter of New India Assurance Co. Ltd. (supra) the Hon'ble Supreme Court upheld the multiplier of 43 years adopted by the Tribunal below where the age of the deceased was 27 years.

The Appeal is contested by Mr.Mehta. He has supported the judgment and the award passed by the Tribunal. He has submitted that the multiplier of 17 adopted by the Tribunal is excessive, 13 years' multiplier would be adequate. In support of his submissions, he has relied upon the judgments of the

Hon'ble Supreme Court in the matters of ***Managing Director, TNSTC Ltd. v. K.I. Bindu and others [(2005)8 SCC 473]; U.P. State Road Transport Corporation v. Krishna Bala and others [AIR 2006 SC 2088] and T.N. State Transport Corpn. Ltd. v. S. Rajapriya and others [(2005)6 SCC 236]***.

We do agree with Mr.Patel that the Tribunal has been conservative in calculating the monthly dependency loss at Rs.5,000/-. The income certificates and the Form No.16 produced by the Life Insurance Corporation of India at Exs.41,43 and 45 indicate that in the financial year 1991-92 the deceased was paid a sum of Rs.1,17,000/- by way of salary, dearness allowance, incentive bonus, etc. Of that the deceased was required to pay Income-tax in the sum of Rs.23,184/-. Considering the salary certificates, it is apparent that the salary income of the deceased after payment of taxes was around Rs.90,000/-. There was no reason for the Tribunal to estimate the salary income of the deceased at Rs.60,000/-. Considering the fact that the deceased was 34 years of age and had around 26 years of service, we estimate that over the years his salary income would have been doubled. In that case, his

annual average salary can fairly be estimated at Rs.1,35,000/- After deducting 1/3rd of the said amount i.e. Rs.45,000/- for maintenance and personal expenditure of the deceased, the average loss of annual dependency would come to Rs.90,000/-. We consider 15 years' multiplier to be fair and adequate. The total dependency loss, thus, calculated would be Rs.13,50,000/-. To this we propose to add a sum of Rs.30,000/- for loss of consortium, expectancy of life and funeral expenses, etc.

For the aforesaid reasons, we hold that the claimants were entitled to the compensation in the sum of Rs.13,80,000/-. The impugned award made by the Tribunal be modified accordingly. The award made in respect of interest and proportionate cost is confirmed.

The Appeal is allowed to the aforesaid extent with proportionate cost.

The Registry will draw the award afresh in accordance with the above directions.

(Ms.R.M. Doshit, J)

(C.K. Buch, J)

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